Michigan IV-D Child Support Manual
Department of Human Services

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1. Background

Surcharge is support; the state law defining support specifically includes surcharge. Surcharge is another way support accrues. Surcharge is not interest; state law precludes interest from accruing on a support order.[1]

Prior to December 31, 2009, MCL 552.603a allowed for a surcharge to be automatically assessed on certain child support arrearages on January 1 and July 1 of each year.

On December 28, 2009, MCL 552.603a(4)-(6) was changed to eliminate the *automatic* assessment of surcharge on all support orders. The law was changed to allow the court to require an individual to pay surcharge beginning January 1, 2011. Other than these two changes, the law remains largely intact. The elements of

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[1] Michigan Compiled Law (MCL) 552.603(11)

surcharge, such as surcharge rate, compounding, eligible arrears, and activities that prevent surcharge accrual remain unchanged.

Note: Because an order for surcharge eligibility cannot be added to a IV-D case between December 28, 2009 and December 31, 2010, no adjustments in this time period are possible. Adjustments to existing surcharge prior to December 28, 2009 are acceptable.[2]

2. Surcharge Calculation

2.1 Surcharge Rate

On January 8, 2004, the governor signed Public Act 276 of 2003 (MCL 552.603a), which became effective January 15, 2004. This law changed surcharge from a fixed 8 percent annual compounding rate to a variable, non-compounding rate.

2.2 Variable Rate

The rate of surcharge is based on the calculation of the average interest paid at auction for five-year U.S. treasury notes (T-notes), plus 1 percent. The Office of Child Support (OCS) uses the T-Note rate certified by the Michigan Department of Treasury for the six months preceding July 1 and January 1 of each year. The surcharge rate is based on the established percentage of the average from the previous six months' T-note rate as reported by the Michigan Department of Treasury.

The Central Table Administrator (CTA) enters the T-note amount on the *Financial System Information* (FNSI) screen in the Michigan Child Support Enforcement System (MiCSES).[3]

Example 1: The surcharge calculation is ([T-note amount +1]/2)/100. For example, the Treasury T-note amount from January 2005 is 3.529. The CTA inputs the T-note amount into MiCSES on the FNSI screen. MiCSES calculates the July 1, 2005 surcharge rate at ([3.529+1]/2)/100 = 0.022645. The resulting figure of 0.022645 is the semiannual surcharge multiplier. MiCSES then multiplies the surcharge rate of 0.022645 by the eligible arrears due on June 30, 2005.

2.3 Prior Fixed Rate

Before July 1, 2004, MiCSES assessed surcharge twice a year using a fixed rate. From January 1, 1996 through January 1, 2004, the Support and Parenting Time Enforcement Act required 8 percent (0.0392304 semiannually)

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[2] For State Court Administrative Office (SCAO) policy information regarding the changes to surcharge, reference SCAO Administrative Memorandum (ADM) 2010-09, *Surcharge Changes*.
[3] Ref: Michigan Department of Treasury historical interest rates for five-year T-Notes.

to be added to eligible arrears that were past-due on January 1 and July 1. This percentage of arrears was added to the existing support arrearage as an undifferentiated amount. This caused the amount of surcharge assessed to compound.

2.4 Non-compoundable vs. Compoundable

In addition to changing the surcharge rate from fixed to variable, MCL 552.603a required that the surcharge no longer compound. Surcharges assessed prior to January 15, 2004 continue to compound, while surcharges assessed after January 15, 2004 will not compound. MiCSES tracks the non-compoundable surcharge (NCSC) separately. NCSC is part of the arrears balances, but is tracked separately to reduce the eligible arrears the next time the surcharge process runs. (Ref: Subsection 3.2.2[D], "Non-Compoundable Surcharge [NCSC]" of this manual section for more information.)

3. Types of Cases Selected for Surcharge

3.1 Selection of Cases for Surcharge

For a IV-D case to be eligible for surcharge assessment, a judge must:

- Find the non-custodial parent (NCP) has failed to pay support under a support order;
- Find the failure was willful; and
- Order the assessment of surcharge.[4]

Additionally, surcharge may only be assessed against an open IV-D case with an open docket that has eligible arrears. Intergovernmental cases have other specific requirements before surcharge may be assessed.

Assessment will occur after IV-D staff indicate in MiCSES that the order is to be assessed a surcharge and the MiCSES surcharge batch program is run.[5]

3.2 Determining Open Cases and Dockets

Cases are selected for surcharge if the case is open and it has arrears/debts that are eligible for surcharge. MiCSES indicates whether the IV-D case is open on the *Case Member Details* (CASE) screen in the *IV-D Case Status* field, and whether the docket is open on the *Support Order Entry* (SORD) screen in the *Court Case Status* field.

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[4] Ref: MCL 552.603a.
[5] Ref: *MiCSES Quick Reference Guide: SORD - View/Update Surcharge Eligibility* for assistance with marking the order for assessment in MiCSES, and Subsection 5, "MiCSES Surcharge Batch Process," in this manual section for the timing of the assessment.

3.2.1   Eligible Arrears

MCL 552.603a allows for surcharge to be applied to past-due support amounts. These past-due support amounts, also known as arrears, are categorized by debt type. The debt types that are eligible for surcharge assessment are Child Care (CC), Child Support (CS), Education (ED), Medical Reimbursement (MR), Medical Support – Client (MS), Out of State (OS),[6] Payee Bonus (PB), Spousal Support (SS) and County Foster Care (WF). (Policy describing each debt type in detail is provided in Action Transmittal (AT) 2004-029, *Michigan Child Support Enforcement System (MiCSES) Debt Types*.) Eligible arrears are reduced by exempt arrears (Ref: Subsection 3.2.2, "Exempt Arrears") and NCSC when the surcharge process runs.

Note: The debt types Medical Support – Medicaid (MD) and Payee Confinement (PC), which were once surchargeable debt types, became ineligible for surcharge assessment in January 2009. These debt types were previously eligible for surcharge due to an error. This error has been corrected. (Therefore, IV-D workers can no longer adjust old surcharge on these debts.)

3.2.2   Exempt Arrears

Exempt arrears are the combined total of prejudgment arrears (including confinement obligations) and retroactive arrears.

Any arrears ordered before the issue date of the support order are exempt from surcharge.

A. Prejudgment Arrears

Prejudgment arrears are arrears a judge orders as part of the final judgment for a period of time before the effective date of the support order. Prejudgment arrears may represent different debts, and historically have been treated differently, depending on the court case type:

*   All court case types – Prejudgment arrears for all court case types are exempt from surcharge if the earliest issue date on the SORD screen is on or after July 1, 2004.
*   Case types other than DP – Prejudgment Arrears **are** eligible for surcharge for surchargeable debt types other than MD and PC prior to July 1, 2004.

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[6] Prior to July 1, 2005, OCS regarded the OS debt type as exempt on all cases.

Note: Prejudgment arrears entered as fixed obligation amounts that charge on a regular cycle may be subject to surcharge. Pursuant to SCAO policy,[7] when prejudgment arrears are established to charge a regular amount for a given period of time (e.g., $50 per month for 30 months), any charged amount that remains unpaid is subject to surcharge.

If surcharge was assessed on prejudgment arrears for confinement obligations that are defined as exempt, MiCSES will not make retroactive adjustments.

B. Retroactive Arrears for All Court Case Types

Retroactive arrears are arrears that accrue on the order between the effective date and the issue date. These arrears are exempt from surcharge if the earliest issue date on the SORD screen is on or after July 1, 2004.

C. Total of Prejudgment Arrears and Retroactive Arrears

If the total of prejudgment arrears and retroactive arrears is greater than the total eligible arrears for the obligation, MiCSES will consider the eligible arrears for surcharge as zero for that obligation. MiCSES tracks both prejudgment arrears and retroactive arrears on the *Financial Event Diary* (ELOG) screen, on the *Obligation Surcharge Details* pop-up.

If retroactive arrears exist and are used in the surcharge calculation, MiCSES includes the retroactive arrears with the prejudgment arrears in the *Exempt Arrears* (formerly *Pre Judg Arrears)* field on the *Obligation Surcharge Details* pop-up on the ELOG screen.

Example 2: The court enters an initial order for support on July 1, 2004. The effective date of the order is January 1, 2004 (retroactive to the date of filing) and requires the NCP to pay $200 in current support per month. The $1,200 retroactive arrearage created from January 1 through July 1 is not subject to surcharge.

Example 3: An order entered June 1, 2002 requires the NCP to pay $200 in current support per month. The custodial party (CP) moves to modify support and files the request with the court on January 1, 2004. On July 1, 2004, the court issues an order increasing support to $300 per month. The order is retroactive to January 1, 2004 (the date the motion to modify was filed). The $100 per month increase in the arrearage is subject to surcharge since the earliest issue date on the SORD record is June 1, 2002.

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[7] Ref: SCAO ADM 2004-04, *Lump Sum Arrearage Interpretation*; SCAO ADM 2004-07, *Changes in Surcharge Law;* and SCAO ADM 1998-09, *Surcharge on Support Arrears*. SCAO ADM 2004-07 updated SCAO ADM 1998-09, but did not fully replace it.

D. Non-Compoundable Surcharge (NCSC)

After January 15, 2004, amounts added to support as surcharge must not be included as a surchargeable balance in subsequent surcharge assessments (i.e., surcharge must not compound). MiCSES uses the following criteria when NCSC is involved.

If multiple checks are voided on the same obligation for the same receipt, and then the receipt is backed out, NCSC will increase by the same amount that NCSC was originally decreased when MiCSES processed the receipt.

When MiCSES decreases NCSC for an obligation based on a receipt payment, backing out the receipt will increase NCSC:

- In the same amount it was decreased during receipt distribution when the back-out process increases the arrears on the obligation by at least the NCSC decrease amount; and
- By the obligation arrears adjustment amount when the back-out process increases the arrears on the obligation by an amount less than the NCSC transaction amount. (Ref: Subsection 2.4, "Non-compoundable vs. Compoundable" of this manual section for more information.)

Example 4: Mr. A's CS obligation has a $1,000 balance, of which $505 is NCSC. MiCSES distributes a $500 receipt to arrears, which reduces NCSC by $5. The $500 receipt falls into a disbursement hold because the CP has a bad address. IV-D staff back out the entire $500 receipt, which increases the previous arrears balances by $500, and increases the NCSC amount by $5.

Example 5: Mr. B's CS arrears are $750, of which $300 is due to the CP and $450 is due to the state. MiCSES distributes a $500 receipt to Mr. B's CS account – $300 of the receipt goes on a disbursement hold because the CP has a bad address, and $200 disburses to the state as assigned arrears. When IV-D staff back out the receipt, only the $300 on hold will increase the arrears and the corresponding NCSC amount in those arrears. The $200 portion of the receipt that disbursed and was subsequently backed out will create a Family Independence Program (FIP) negative offset. The corresponding NCSC amount will increase.

3.3 Intergovernmental Cases

Surcharge is assessed on Uniform Interstate Family Support Act (UIFSA) intergovernmental[8] cases when:[9]

- Michigan has Continuing, Exclusive Jurisdiction (CEJ);
- Michigan had issued the order and lost CEJ, and no other state has assumed CEJ; or
- Another state establishes CEJ, but the NCP/docket has another SORD record indicating that Michigan has CEJ.

Surcharge will not be assessed on intergovernmental cases when the court case CEJ Federal Information Processing Standards (FIPS) Code belongs to a state other than Michigan. Also, MiCSES will not consider any of the following information when determining if a surcharge will be assessed:

- The obligation's FIPS Code;
- Whether the IV-D case is initiating or responding; and
- The court case suffix.

The following chart shows the status fields that MiCSES reviews on intergovernmental cases to determine surcharge.

Status Fields to Determine Surcharge

CEJ Status	CEJ FIPS Code	SORD Issuing Order FIPS Code	Surcharge
Not Assumed	0000000	Starts with 26	Yes
Not Assumed	0000000	Other than 26	No
Active	Starts with 26	-	Yes
Unknown	0000000	-	No
Active	Other than 26	-	No

4. Case Activities Preventing Surcharge Assessment

There are two situations where cases otherwise eligible for surcharge will be automatically exempt from surcharge. These situations are 1) 90 percent of current support due has been paid; and 2) the surcharge payment plan, which is only effective with a court order. MiCSES will assess surcharge unless cases meet the specific criteria for each of these situations.

Up until December 28, 2009,[10] IV-D staff could neither exempt nor waive individual dockets/cases from surcharge by any manual process, unless:

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[8] The term "interstate" has been replaced with "intergovernmental" to include interstate, international and tribal cases.
[9] Ref: Public Act 310 of 1996 - UIFSA law.
[10] Senate Bill 100 (2009) eliminated automatic surcharge accrual on all orders. (Ref: Subsection 1, "Background" of this manual section for more information.)

- Ordered by the court;
- IV-D staff enter a parenting time abatement for the prior six-month period after the surcharge process runs; or
- An error is found during an audit.

4.1 Paying 90 Percent of Current Support Due

Effective June 30, 2005, surcharge must not be assessed when the obligor has paid an amount at least equal to 90 percent of current support due in the immediate preceding January 1 to June 30, or July 1 to December 31.

Surcharge is not assessed when the obligor pays an amount at least equal to 90 percent of the current support due in the preceding six months. When the obligor meets the 90 percent threshold, the ELOG screen surcharge amount in the *Description* column displays zero assessed as surcharge. MiCSES also displays the calculated charge(s) and calculated payment(s) on the *Support Obligations Charges and Payments* pop-up associated with the surcharge event. Users may view this pop-up by clicking the Detail button on the ELOG screen when it displays "Y."

Surcharge may be assessed when an NCP has not paid an amount at least equal to 90 percent of current support. MiCSES will record the figures used to determine if the 90 percent threshold (charges[s] and payment[s]) has been met on the *Support Obligations Charges and Payments* pop-up on the ELOG screen.

4.1.1 Current Support Due

When determining if an NCP has paid an amount at least equal to 90 percent of current support, MiCSES must calculate how much current support was due. After summing all child support charges for a given six-month period, MiCSES will reduce that total by an amount equal to any adjustments that used the reason code "Parenting Time Abatement."

Note: The decrease in current support due only applies when an adjustment for parenting time abatement is posted during the surcharge period and applied toward a month that also falls within that period.

4.1.2 Current Support Paid

After determining the amount of child support due, MiCSES will sum up all payments to any of the NCP's obligations in the last six months. Only the following receipts will not be considered:

- Pass-through receipts;
- Backed-out receipts;
- Payer and distribution level held receipts; and
- Any arrears adjustment, including non-cash credit adjustments done on the *Obligation Arrears Adjustment* (OBAA) screen.

MiCSES will then divide the amount due by the amount paid. If the calculation shows at least 90 percent of current support has been paid, surcharge will not be assessed.

The following five examples illustrate how MiCSES will consider assessing surcharge, given one or more obligations for various time periods.

Example 6: One CS obligation charges $100 per month for six months, January 2005 through June 2005. MiCSES considers the CS obligation for the entire six months for surcharge assessment in June. The six-month current support due is $600. Any payments of $540 (or more) applied to the same NCP/docket as the obligation will result in no surcharge assessed.

Example 7: There are two CS obligations, each charging $100 per month to the same NCP/docket. One obligation charges for six months, January 2005 through June 2005; the other obligation charges for only three months, January 2005 through March 2005. MiCSES considers both obligations for surcharge assessment in June. The six-month current support due is $600 and $300 for each obligation, respectively, totaling $900. Any payments totaling $810 (or more) applied to the same NCP/docket as the obligations will result in no surcharge assessed.

Example 8: There are two CS obligations, each charging $100 per month to the same NCP/docket. One obligation charges for six months, January 2005 through June 2005; the other obligation begins charging in May. MiCSES considers the CS obligations for both children for surcharge assessment in June. The six-month current support due is $600 and $200 for each obligation respectively, totaling $800. Any payments totaling $720 (or more) applied to the same NCP/docket as the obligations will result in no surcharge assessed.

Example 9: One CS obligation charges $100 per month for the first three months, January 2005 through March 2005. MiCSES considers the CS obligation for the three months for surcharge assessment in June. The six-month current support due is $300. Any payments totaling $270 (or more) applied to the same NCP/docket as the obligation will result in no surcharge assessed.

Example 10: One CS obligation charges $100 per month for six months. The current support due is $600. Any payments totaling $540 (or more) applied to the same NCP/docket as the obligation will result in no surcharge assessed. If the NCP makes one $550 payment in June, no surcharge will be assessed.

4.2   Entering a Surcharge Payment Plan

Courts may order a surcharge payment plan that includes provisions to defer surcharge assessment. MCL 552.603d also indicates that surcharge can be **discharged** (forgiven) if federal and state law permit it. Pursuant to federal law and regulation, support **cannot** be discharged (forgiven) without the express consent of the person owed the support.[11] Pursuant to state law, surcharge **is** support. Consequently, while future surcharge assessment can be deferred and ultimately waived without the CP's consent, surcharge that has accrued (prior to the deferral) cannot.

MiCSES tracks this court-ordered surcharge payment plan amount, and IV-D staff may reinstate surcharge if NCPs do not meet the surcharge payment plan requirements.

A *Payment Plan Information* pop-up on the SORD screen allows IV-D staff to enter a surcharge payment plan. There are four valid status types for surcharge payment plans:

- SA – Surcharge payment plan active;
- SC – Surcharge payment plan compliance;
- SN – Surcharge payment plan non-compliance; and
- SE – Surcharge payment plan ended.

IV-D staff may enter only one surcharge payment plan for a given period. IV-D staff may enter a surcharge payment plan at the same time an arrearage payment plan or an enforcement payment plan is active for the docket and NCP combination. The *Obligation Surcharge Details* pop-up on the ELOG screen displays the deferred surcharge amount and the total deferred surcharge amount.

The *Payment Plan Information* pop-up on the SORD screen allows IV-D staff to print a payment plan history.

5. MiCSES Surcharge Batch Process

The MiCSES surcharge batch process considers the surcharge rate, and eligible and exempt arrears.

5.1   Amount Surcharged

Surcharge is assessed on the eligible arrearage due as of June 30 and December 31. The surcharge batch process subtracts an amount equal to the

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[11] Ref: 42 United States Code (USC) 666(a)(9) and 45 Code of Federal Regulations (CFR) 302.70(a)(9)(i).

current month's support charges from the eligible arrears as of July 1 and January 1, before assessing surcharge.

> **Example 11:** On June 30, the NCP has a total arrears of $2,500. On July 1, a $500 obligation for the month of July is added to the case. The one-month's charge reduction required by statute will reduce the amount of arrears eligible for surcharge by $500 (July's current support charges) only. MiCSES will assess surcharge against the balance due on the case as of June 30 ($2,500).

5.2 Prorating Surcharge Across Multiple Obligations

Surcharge is prorated across multiple obligations based on eligible arrears under a docket. The sum of the surcharge of all the obligations will equal the total surcharged amount on the NCP/docket combination.

The surcharge amount is prorated across multiple arrears categories with an obligation-based surcharge. The sum of the surcharge of all the arrears categories must equal the total surcharged amount for that obligation – without losing or adding any cents.

> **Example 12:** Mr. C owes enough in support arrears on three different obligations (CC, CS and ED) to be assessed a surcharge of $100 on his docket. The surcharge batch process will add $33.33 to the CC obligation, $33.33 to the CS obligation, and $33.34 to the ED obligation, for a total of $100 in assessed surcharge.

6. MiCSES Case Information Concerning Surcharge

MiCSES allows IV-D staff to print a history of charges and payments in a payment plan from the *Payment Plan Information* pop-up on the SORD screen. The *Obligation Surcharge Details* pop-up on the ELOG screen displays the final arrears balance due at the end of the semiannual surcharge period. If an obligation is modified after the semiannual period (June 30 or December 31), but before MiCSES assesses surcharge for the semiannual period, the current charge added on that day will not be included in the final arrears.

SUPPORTING REFERENCES: Federal
42 USC 666(a)(9)
45 CFR 302.70(a)(9)(i)

State
Public Act 310 of 1996
Public Act 208 of 2004
MCL 552.502a
MCL 552.602
MCL 552.603a
MCL 552.603(11)

MCL 552.603d
MCL 552.605c
MCL 552.1605
MCL 722.711 to 722.730
Senate Bill 100 (2009)

SCAO ADM 2010-09. *Surcharge Changes*
SCAO ADM 2004-07, *Changes in Surcharge Law*
SCAO ADM 2004-04, *Lump Sum Arrearage Interpretation*
SCAO ADM 1998-09, *Surcharge on Support Arrears*

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